

Message Text

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ACTION EB-11

INFO OCT-01 FTC-01 EUR-25 ISO-00 TAR-02 SPC-03 AID-20

NSC-07 RSC-01 CIEP-02 TRSE-00 SS-20 STR-08 OMB-01

CEA-02 CIAE-00 COME-00 FRB-02 INR-10 NSAE-00 XMB-07

OPIC-12 LAB-06 SIL-01 L-03 H-03 DODE-00 PA-04 USIA-15

PRS-01 PM-07 JUSE-00 DRC-01 /176 W

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R 261514Z MAR 74

FM AMEMBASSY BERN

TO SECSTATE WASHDC 8838

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E.O. 11652: N/A

TAGS: EGEN, ETRD, PFOR, PINT, SZ

SUBJECT: FTC INVESTIGATION OF NESTLE/RATIFICATION OF JUDICIAL
ASSISTANCE TREATY

REF: A) STATE 12882; B) STATE 11577

1. SUMMARY. NATIONAL COUNCILOR PAUL EISENRING MARCH 13
INTRODUCED NON-BINDING RESOLUTION IN NATIONAL COUNCIL
INVITING FEDERAL COUNCIL TO INVESTIGATE ALLEGED DISCRIM-
INATION IN US AGAINST SWISS FIRMS AND TO DELAY RATIFICA-
TION OF US-SWISS JUDICIAL ASSISTANCE TREATY. RESOLUTION
WILL BE DISCUSSED BY NATIONAL COUNCIL PROBABLY IN JUNE
AND FEDERAL COUNCIL WILL AT THAT TIME RESPOND. GOVERN-
MENT EXPECTED TAKE FIRM POSITION AGAINST RESOLUTION AND
TO PROCEED WITH STEPS TOWARD RATIFICATION AND IMPLEMEN-
TATION OF TREATY. EMBASSY SUGGESTS, HOWEVER, THAT IN
INTEREST REMOVING ALL POSSIBLE TALKING POINTS AGAINST
TREATY RATIFICATION USG AGENCIES ENDEAVOR RESOLVE
LONG-STANDING FTC/NESTLE INVESTIGATION AS WELL AS DRAWN-
OUT DUMPING CASE AGAINST LARGE TRANSFORMERS FROM BROWN-

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BOVERI. END SUMMARY.

2. MARCH 14 ISSUE OF IMPORZANT ZURICH ECONOMIC-COMMERCIAL NEWSPAPER "SCHWEIZERISCHE HANDELS-ZEITUNG" (SHZ) IN FULL PAGE ARTICLE REPORTED THAT NATIONAL COUNCILOR (I.E., MEMBER OF LOWER HOUSE OF PARLIAMENT) PAUL EISENRING, WHO IS OWNER-PUBLISHER OF PAPER, HAD INTRODUCED "POSTULAT" (NON-BINDING RESOLUTION) INVITING FEDERAL COUNCIL (I.E., CABINET) TO INVESTIGATE SITUATION OF SWISS FIRMS IN US TO SEE IF THEY RECEIVE SAME LIBERAL TREATMENT FROM US AUTHORITIES THAT US FIRMS IN SWITZERLAND RECEIVE. IF DISCRIMINATION FOUND TO EXIST IN US AGAINST SWISS FIRMS AND IF SITUATION CANNOT BE REMEDIED, EISENRING SUGGESTS THAT PARLIAMENTARY RATIFICATION FORESEEN FOR THIS YEAR OF US-SWISS JUDICIAL ASSISTANCE TREATY AND ITS IMPLEMENTATION BE POSTPONED.

3. SHZ ARTICLE, WHICH CONTAINS NUMEROUS FACTUAL MISTAKES AND ERRONEOUS SWEEPING STATEMENTS, DISCUSSES AT SOME LENGTH NESTLE EXPERIENCE OVER PAST SEVERAL YEARS WITH FTC FOLLOWING ACQUISITION OF LIBBY. ARTICLE REPEATS MANY POINTS MADE IN SPEECH BY NESTLE CHAIRMAN LIOTARD-VOGT BEFORE AMERICAN CHAMBER IN ZURICH OCTOBER 1973 (BERN A-426, OCT 25, 1973). ARTICLE REFERS TO VOLUME OF INFORMATION SOUGHT BY FTC FROM NESTLE AND NEED PRESERVE SWISS COMMERCIAL SECRECY.

4. NO OTHER EXAMPLES OF ALLEGED DISCRIMINATION IN US CITED. EISENRING PROPOSAL HAS TO OUR KNOWLEDGE NOT BEEN MENTIONED IN ANY OTHER SWISS NEWSPAPER.

5. EMBOFF MET MARCH 20 WITH AMBASSADOR KLAUS JACOBI AND MAX KRELL OF DIVISION OF COMMERCE FOR INFORMAL EXCHANGE OF VIEWS RE EISENRING INITIATIVE. JACOBI SAID THAT AFTER LOOKING INTO MATTER HE WAS CONVINCED THAT CONCERN WHICH PROMPTED EISENRING MAKE THIS PROPOSAL WAS FTC/NESTLE CASE RATHER THAN JUDICIAL ASSISTANCE TREATY. (EMBASSY HAS REASON TO BELIEVE, HOWEVER, THAT EISENRING IS ALSO OPPOSED TO TREATY.) JACOBI THOUGHT THAT THOSE CONCERNED RE FTC/NESTLE CASE HOPE TO GAIN SUPPORT FROM OTHERS OPPOSED TO TREATY WHILE ADMITTING THAT REVERSE WOULD BE EQUALLY TRUE. HE EMPHASIZED THAT GOS OFFICIALS HAD BEEN LIMITED OFFICIAL USE
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COMPLETELY SURPRISED BY EISENRING PARLIAMENTARY INITIATIVE AND VERY MUCH REGRETTED THE STRONG, ERRONEOUS, AND MISLEADING WORDING OF THE POSTULATE AS WELL AS THE AWKWARD AND CRUDE ATTEMPT TO LINK THE COMPLETELY UNRELATED ISSUES OF FTC/NESTLE AND TREATY RATIFICATION.

6. POLITICAL DEPARTMENT, WITH HELP FROM DIVISION OF COMMERCE AND DEPARTMENT OF JUSTICE, WILL PREPARE MATERIAL FOR RESPONSE WHICH FEDERAL COUNCILOR GRABER CAN USE WHEN POSTULATE IS PLACED ON NATIONAL COUNCIL AGENDA

PRESUMABLY AT JUNE SESSION. JACOBI SAID HE HAD IN MIND MAKING CLEAR THAT TREATMENT SWISS FIRMS RECEIVE IN US IS EVEN-HANDED AND FAIR UNDER US LAW, EXPLAIN APPLICATION OF US ANTI-TRUST LAW BY FTC AND JUSTICE, AND NOTE THAT AMERICAN FIRMS IN SWITZERLAND ALSO HAVE PROBLEMS AND OCCASIONALLY COMPLAIN ABOUT WHAT THEY REGARD AS SWISS DISCRIMINATION. HE MENTIONED SPECIFICALLY MATTER OF FOREIGN WORK PERMITS.

7. JACOBI WENT ON, HOWEVER, TO NOTE THAT FTC INVESTIGATION OF NESTLE HAD BEEN GOING ON FOR SEVERAL YEARS AND THAT SWISS CONCERNS RE CASE HAVE BEEN EXPRESSED TO USG ON SEVERAL OCCASIONS, INCLUDING MAY 1973 WASHINGTON VISIT OF FEDERAL COUNCILOR BRUGGER, AMBASSADOR JOLLES, AND JACOBI. ON BASIS MOST RECENT SWISS EMBASSY INQUIRY ON MARCH 4 AT DEPARTMENT OF STATE (EUR/CE), SWISS ARE AWARE OF CURRENT SITUATION (ALSO REFLECTED IN RECENT DEPARTMENT OF STATE/FTC EXCHANGE OF CORRESPONDENCE). JACOBI SAID THAT ACCELERATED PROGRESS TOWARD A REASONABLE SETTLEMENT BY THE FTC OF THE NESTLE CASE WOULD CERTAINLY BE MOST WELCOME AND WOULD OBVIATE NEED ARGUE IN PARLIAMENTARY BODIES THAT TREATY RATIFICATION SHOULD BE SPEEDILY ACCOMPLISHED DESPITE OTHER OUTSTANDING US-SWISS ISSUES.

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ACTION EB-11

INFO OCT-01 EUR-25 ISO-00 FTC-01 TAR-02 SPC-03 AID-20

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8. EMBOFF NOTED THAT WORDING OF POSTULATE SUGGESTED THAT OTHER PROBLEMS BESIDES FTC/NESTLE CASE WERE OF CONCERN TO EISENRING. JACOBI RECALLED THAT EISENRING SERVES AS PRESIDENT OF ZURICH INVESTMENT BANK (PRIVATBANK UND VERWALTUNGSGESELLSCHAFT) WHICH IS CLOSELY IDENTIFIED WITH BROWN-BOVERI AND THOUGHT HE MIGHT ALSO BE CONCERNED RE LONG-STANDING QUESTION OF DUMPING DUTIES TO BE ASSESSED AGAINST LARGE TRANSFORMERS PRODUCED BY BROWN-BOVERI. EMBASSY WOULD APPRECIATE REPORT ON DEVELOPMENTS IN THIS CASE SINCE LAST STATUS REPORT (STATE 193838, SEPTEMBER 28, 1973).

9. PRESIDENT AND EXECUTIVE DIRECTOR OF AMERICAN CHAMBER OF COMMERCE IN SWITZERLAND (ACCS) MET AT LENGTH MARCH 15 WITH EISENRING, WHO IS MEMBER CHAMBER BOARD OF DIRECTORS, IN EFFORT LEARN WHAT WAS BEHIND HIS PRIMITIVE AND MIS-INFORMED PARLIAMENTARY PROPOSAL AND SHZ ARTICLE. MEETING WAS GENERALLY INCONCLUSIVE. WE UNDERSTAND ACCS OFFICERS PLAN TO SEE SENIOR NESTLE OFFICIALS IN EFFORT POINT OUT THAT HIS SORT OF THING DOES NO GOOD FOR THEIR INTERESTS OR MORE GENERAL MATTER OF SWISS-US TRADE AND INVESTMENT
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RELATIONS.

10. WE HAVE NOTED THAT ACCORDING AFP STORY DATELINED NEW YORK MARCH 19 AND CARRIED IN GENEVA PRESS MARCH 20 LIOTARD-VOGT MADE STRONGLY WORDED STATEMENT THAT BECAUSE OF EXPERIENCE WITH FTC AFTER ACQUISITION LIBBY, NESTLE WAS NO LONGER INTERESTED IN MAKING ANY NEW ACQUISITIONS IN US. IF THIS STATEMENT ACCURATELY REFLECTS CORPORATE POLICY, IT WOULD SEEM REGRETTABLE, SINCE NESTLE IS CERTAINLY IMPORTANT POTENTIAL AS WELL AS ACTUAL INVESTOR IN US.

11. COMMENT: EMBASSY IS CONFIDENT THAT GOS CAN AND WILL EFFECTIVELY RESPOND TO EISENRING POSTULATE. WE ALSO BELIEVE THAT ANY EFFORT ON OUR PART TAKE ISSUE WITH EISENRING WOULD AT THIS STAGE ONLY GIVE MORE PUBLICITY TO SUBJECT WHICH AS NOTED ABOVE HAS BEEN TREATED IN ONLY ONE SWISS PAPER. WE WILL STAY IN TOUCH ON THIS MATTER WITH POLITICAL AND JUSTICE DEPARTMENTS, AS WELL AS DIVISION OF COMMERCE. WE HAVE NO REASON TO THINK (A) THAT THERE WILL BE ANY DELAY IN PRESENT TARGET OF SEEKING TREATY RATIFICATION AND IMPLEMENTATION AT SUMMER PARLIAMENTARY SESSION (REF B), (B) THAT GOS WILL GIVE ANYTHING LESS THAN FULL AND ENTHUSIASTIC SUPPORT FOR TREATY, OR (C) THAT OPPONENTS WILL GAIN MORE THAN LIMITED SUPPORT.

WE WILL ALSO, OF COURSE, BE TAKING FURTHER SOUNDINGS
OVER NEXT FEW MONTHS. WE BELIEVE, HOWEVER, THAT TO
EXTENT POSSIBLE IT WOULD BE VERY HELPFUL IF SUCH LONG-
STANDING IRRITANTS IN US-SWISS RELATIONS AS FTC/NESTLE
AND BROWN-BOVERI DUMPING CASES COULD BE SATISFACTORILY
RESOLVED BEFORE SWISS NATIONAL COUNCIL BEGINS DEBATE ON
TREATY RATIFICATION SO AS TO AVOID DRAGGING IN OF
EXTRANEIOUS AND UNRELATED MATTERS. WE HOPE ALL USG
AGENCIES CONCERNED WITH TREATY IMPLEMENTATION COULD
REVIEW STEPS WITH MIGHT BE POSSIBLE IMPROVE GENERAL
CLIMATE US-SWISS RELATIONS SO AS TO CONTRIBUTE TO
ASSURING SPEEDY TREATY RATIFICATION.
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